

HOUSE BILL NO. 483

INTRODUCED BY BERGREN, GALVIN-HALCRO, VILLA, NOONAN, LANGE, PARKER, TROPILA,
MATTHEWS, WILSON, HARRINGTON, GOLIE, A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING POLICE OFFICERS FROM GOING ON STRIKE;
PROVIDING FOR BINDING ARBITRATION IN LABOR NEGOTIATIONS INVOLVING POLICE OFFICERS;
PROVIDING PROCEDURES FOR BINDING ARBITRATION; AMENDING SECTION 7-32-4114, MCA; AND
PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Strikes by police officers prohibited. (1) It is unlawful for a police officer
to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) (a) As used in this section, "strike" means an action listed in subsection (2)(b), in concerted action
with others, for the purpose of inducing, influencing, or coercing a change in the conditions of employment,
compensation, rights, privileges, or obligations of employment of a police officer.

(b) A police officer may not engage in the following actions in concert with others:

(i) refusal to report for duty;

(ii) willful absence from the police officer's position;

(iii) stoppage of work; or

(iv) departure from the full, faithful, or proper performance of duties of employment.

NEW SECTION. Section 2. Mediation of disputes. (1) If after a 150 calendar day period of good faith
negotiation over the terms of an agreement, or 150 days after certification or recognition of an exclusive
representative, an agreement has not been signed, either or both of the parties may notify the board of ~~labor~~
PERSONNEL appeals of the status of the negotiations and of the need for a mediator. The parties may agree to
request a mediator before the end of the 150-day period. The 150-day period begins when the parties meet for
the first bargaining session and each party has received the other party's initial proposal. Upon receipt of the
notification, the board of ~~labor~~ PERSONNEL appeals shall appoint a mediator and notify the parties of the
appointment.

(2) (a) After 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Written notification of an impasse must be filed with the board of ~~labor~~ PERSONNEL appeals.

(b) Within 7 days of the declaration of an impasse, each party shall submit to the mediator the final written offer of the party, including a cost summary of the offer. Within 7 days of receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary addressing those issues on which the parties have failed to reach an agreement. Each party's proposed contract language must be titled "Final Offer".

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may agree to and, upon agreement, shall jointly petition the board of ~~labor~~ PERSONNEL appeals to appoint a fact finder. The fact finder must be appointed as provided in 39-31-308(2).

(d) If an agreement is not reached within 30 days after the mediator makes the final offers public or, if the parties participated in fact finding, within 30 days after the receipt of the fact finder's report, either party may petition the board of ~~labor~~ PERSONNEL appeals for binding arbitration. The petition must include a copy of each party's "Final Offer", as provided in subsection (2)(b).

NEW SECTION. Section 3. Binding arbitration -- policy. (1) It is the policy of the state that because the right of police officers to strike is prohibited by [section 1], it is necessary to the high morale of police officers and to the efficient operation of police departments to provide an alternative, expeditious, and effective procedure for the resolution of labor disputes through binding arbitration.

(2) Binding arbitration must be scheduled by mutual agreement no earlier than 30 days following the submission of the petition seeking binding arbitration under [section 2(2)(d)].

NEW SECTION. Section 4. Selection of arbitrator -- procedure -- cost-sharing. (1) (a) After receipt of the petition to arbitrate under [section 2(2)(d)], the board of ~~labor~~ PERSONNEL appeals shall submit a list of five qualified, disinterested, and unbiased individuals to the parties. Each party shall alternately strike two names from the list. The order of striking names must be determined by a coin toss. The remaining individual is the arbitrator.

(b) If the parties have not designated the arbitrator and notified the board of ~~labor~~ PERSONNEL appeals of their choice within 5 days of receipt of the list, the board of ~~labor~~ PERSONNEL appeals shall appoint the

1 arbitrator from the names on the list. However, if one of the parties strikes names from the list, as provided in
2 subsection (1)(a), the board of ~~labor~~ PERSONNEL appeals shall appoint the arbitrator from the names remaining
3 on the list.

4 (2) The arbitrator shall establish the dates, times, and places of hearings. The arbitrator may issue
5 subpoenas. Within 14 calendar days prior to the date of a hearing, each party shall submit to the other party
6 a written last best offer package on all unresolved mandatory subjects. The last best offer package may not be
7 changed. The arbitrator may administer oaths and shall afford the parties the opportunity to examine and
8 cross-examine all witnesses and to present evidence relevant to the dispute.

9 (3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer
10 package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through
11 (3)(h). Primary consideration must be given to the criteria in subsection ~~(4)(a)~~ (3)(A). The criteria are:

12 (a) the interest and welfare of the public;

13 (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract,
14 giving consideration and weight to the other services provided by the unit of government, as determined by the
15 governing body of the unit of government;

16 (c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit
17 levels provided;

18 (d) the overall compensation presently received by the police officers, including direct wage
19 compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;

20 (e) comparison of the overall compensation of other police officers in comparable communities with
21 similar populations in Montana and contiguous states;

22 (f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost
23 of living;

24 (g) the stipulations of the parties; and

25 (h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into
26 consideration in the determination of wages, hours, and other terms and conditions of employment. However,
27 the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsection (3)(a)
28 through (3)(g) provide a sufficient basis for an award.

29 (4) Within 30 days after the conclusion of the hearings or an additional period agreed upon by the
30 parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall

1 make written findings along with an opinion and order. The opinion and order must be served on the parties and
2 the board of ~~labor~~ PERSONNEL appeals. Service may be made by personal delivery or by certified mail. The
3 findings, opinion, and order must be based upon the criteria listed in subsection (3).

4 (5) The cost of arbitration must be borne equally by the parties.
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6 **NEW SECTION. Section 5. Arbitration decision final.** Subject to Title 27, chapter 5, part 3, the
7 decision of the arbitrator is final and is binding on the parties, and the board of ~~labor~~ PERSONNEL appeals shall
8 issue an order containing the decision. Refusal or failure to comply with any provision of a final and binding
9 arbitration award is an unfair labor practice. An order issued by the board of ~~labor~~ PERSONNEL appeals pursuant
10 to this section may be enforced by either party or the board of ~~labor~~ PERSONNEL appeals in the district court for
11 any county in which the dispute arose.
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13 **Section 6.** Section 7-32-4114, MCA, is amended to read:

14 **"7-32-4114. Restrictions on activities of ~~policemen~~ police officers.** (1) Except as provided in
15 subsection (2), a member of the police force may not hold any other office or be employed in any other
16 department of the city or town government. A member of the police force may not strike, as provided in [section
17 1].

18 (2) A member of the police force of a third-class city or of a town may be employed in another
19 department of the city or town government. However, the member may not hold political office in the city or town
20 government.

21 (3) The fact that a person is an officer or member of the police department does not deprive the
22 person's spouse or any member of the person's family of the right to participate in political activity or to hold
23 public or political office.

24 (4) An officer or member of the police department may participate in political activity ~~provided that if the~~
25 officer does not do so while on duty or in uniform or ~~that it~~ if the activity does not otherwise interfere with the
26 performance of duties."
27

28 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be
29 codified as an integral part of Title 39, chapter 31, and the provisions of Title 39, chapter 31, apply to [sections
30 1 through 5].

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2 NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
3 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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5 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2005.

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